claims in the original patent, and permitted the rectification of errors in the payment of the additional fees in accordance with regulations of the Commissioner.

Subsec. (a)5. Pub. L. 89-83, § 1, increased the fee for filing disclaimers from $10 to $15.

Subsec. (a)6. Pub. L. 89-83, § 1, increased the fee on appeal for the first time from the examiner to the Board of Appeals from $25 to $50, and added the additional $50 fee for filing a brief in support of the appeal.

Subsec. (a)7. Pub. L. 89-83, § 1, increased the fee for filing a petition for the revival of an abandoned application or for the delayed payment of the issuance fee from $10 to $15.

Subsec. (a)8. Pub. L. 89-83, § 1, added the fee for the certificate under section 256 of this title, and increased the fee for a certificate under section 255 of this title from $10 to $15.

Subsec. (a)9. Pub. L. 89-83, § 1, increased the fee for copies of specifications and drawings of patents (other than design patents) from 25 cents to 50 cents per copy and the fee for copies of specifications and drawings of design patents from 10 cents to 20 cents per copy, and permitted the Commissioner to establish a charge not to exceed $1 per copy for patents in excess of twenty-five pages of drawings and specifications and for plant patents printed in color and to provide applicants, without charge, with copies of specifications and drawings when referred to in a section 132 notice.

Subsec. (a)10. Pub. L. 89-83, § 1, changed the recording fee from $3 for every document not exceeding six pages and $1 for each additional two pages or less to a flat $20 fee for every document, and substituted a $3 fee for each additional item where the document relates to more than one patent or application for a 50 cents additional fee for each additional patent or application included in one writing where more than one is so included.

Subsec. (c). Pub. L. 89-83, § 2, added subsec. (c).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 7 of Pub. L. 89-83 provided that:

"(a) This Act [amending sections 41, 112, 151, 154, and 282 of this title, and section 1113 of Title 15, Commerce and Trade, and repealing section 266 of this title] shall take effect three months after its enactment [July 24, 1965].

"(b) Items 1, 3, and 4 of section 41(a) of title 35, United States Code, as amended by section 1 of this Act, do not apply in further proceedings in applications filed prior to the effective date of this Act.

"(c) Item 2 of section 41(a), as amended by section 1 of this Act [item 2 of subsec. (a) of this section], and section 4 of this Act [amending section 151 of this title] do not apply in cases in which the notice of allowance of the application was sent, or in which a patent issued, prior to the effective date; and, in such cases, the fee due is the fee specified in this title prior to the effective date of this Act.

"(d) Item 3 of section 31 of the Trademark Act, as amended by section 3 of this Act [item 3 of section 1113 (a) of Title 15], applies only in the case of registrations issued and registrations published under the provisions of section 12(c) of the Trademark Act [section 1062(c) of Title 15] on or after the effective date of this Act."

CROSS REFERENCES

Issue of patents without fee to Government employees, see section 266 of this title.

Payment of final fee, see section 151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13 of this title.

### § 42. Payment of patent fees; return of excess amounts

All patent fees shall be paid to the Commissioner who, except as provided in sections 361(b) and 376(b) of this title, shall deposit the same in the Treasury of the United States in such manner as the Secretary of the Treasury directs, and the Commissioner may refund any sum paid by mistake or in excess of the fee required by law.

(July 19, 1952, ch. 950, 66, Stat. 796; Nov. 14, 1975, Pub. L. 94-131, § 4, 89 Stat. 690.)

EFFECTIVE DATE OF 1975 AMENDMENT

*For effective date of amendment of section by Pub. L. 94-131, § 4, Nov. 14, 1975, 89 Stat. 690, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.*

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 79 (Mar. 6, 1920, ch. 94, § 1 (part), 41 Stat. 503, 512).

Language has been changed.

AMENDMENTS

1975—Pub. L. 94-131 inserted the exception provision, ", except as provided in sections 361(b) and 376(b) of this title,".

CROSS REFERENCES

Deposit of Patent and Trademark Office fees in Treasury to appropriately designated trust-fund receipt accounts, and availability for refunds, etc., see section 725r of Title 31, Money and Finance.

## PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS


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AMENDMENTS

1975—Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted "Patent and Trademark Office" for "Patent Office" in heading of chapter 13.

## CHAPTER 10—PATENTABILITY OF INVENTIONS


Sec.
100. Definitions.
101. Inventions patentable.
102. Conditions for patentability; novelty and loss of right to patent.
103. Conditions for patentability; non-obvious subject matter.
104. Invention made abroad.


### § 100. Definitions

When used in this title unless the context otherwise indicates—

(a) The term "invention" means invention or discovery.

(b) The term "process" means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

[1] So in original. Does not conform to chapter heading.

(c) The terms "United States" and "this country" mean the United States of America, its territories and possessions.

(d) The word "patentee" includes not only the patentee to whom the patent was issued but also the successors in title to the patentee.

(July 19, 1952, ch. 950, 66 Stat. 797.)

HISTORICAL AND REVISION NOTES

Paragraph (a) is added only to avoid repetition of the phrase "invention or discovery" and its derivatives throughout the revised title. The present statutes use the phrase "invention or discovery" and derivatives.

Paragraph (b) is noted under section 101.

Paragraphs (c) and (d) are added to avoid the use of long expressions in various parts of the revised title.

### § 101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

(July 19, 1952, ch. 950, 66 Stat. 797.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 31 (R.S. 4886, amended (1) Mar. 3, 1897, ch. 391, § 1, 29 Stat. 692, (2) May 23, 1930, ch. 312, § 1, 46 Stat. 376, (3) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

The corresponding section of existing statute is split into two sections, section 101 relating to the subject matter for which patents may be obtained, and section 102 defining statutory novelty and stating other conditions for patentability.

Section 101 follows the wording of the existing statute as to the subject matter for patents, except that reference to plant patents has been omitted for incorporation in section 301 and the word "art" has been replaced by "process", which is defined in section 100. The word "art" in the corresponding section of the existing statute has a different meaning than the same word as used in other places in the statute; it has been interpreted by the courts as being practically synonymous with process or method. "Process" has been used as its meaning is more readily grasped than "art" as interpreted, and the definition in section 100(b) makes it clear that "process or method" is meant. The remainder of the definition clarifies the status of processes or methods which involve merely the new use of a known process, machine, manufacture, composition of matter, or material; they are processes or methods under the statute and may be patented provided the conditions for patentability are satisfied.

CROSS REFERENCES

Design patents, see section 171 et seq. of this title.

Issue of patent generally, see section 151 et seq. of this title.

Plant patents, see section 161 et seq. of this title.

### § 102. Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless—

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

(c) he has abandoned the invention, or

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent, or

(f) he did not himself invent the subject matter sought to be patented, or

(g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

(July 19, 1952, ch. 950, 66 Stat. 797; July 28, 1972, Pub. L. 92-358, § 2, 86 Stat. 502; Nov. 14, 1975, Pub. L. 94-131, § 5, 89 Stat. 691.)

EFFECTIVE DATE OF 1975 AMENDMENT

*For effective date of amendment of par. (e) by Pub. L. 94-131, § 5, Nov. 14, 1975, 89 Stat. 691, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.*

HISTORICAL AND REVISION NOTES

Paragraphs (a), (b), and (c) are based on Title 35, U.S.C., 1946 ed., § 31 (R.S. 4886, amended (1) Mar. 3, 1897, ch. 391, § 1, 29 Stat. 692, (2) May 23, 1930, ch. 312, § 1, 46 Stat. 376, (3) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

No change is made in these paragraphs other than that due to division into lettered paragraphs. The interpretation by the courts of paragraph (a) as being more restricted than the actual language would suggest (for example, "known" has been held to mean "publicly known") is recognized but no change in the language is made at this time. Paragraph (a) together with section 104 contains the substance of Title 35, U.S.C., 1946 ed., § 72 (R.S. 4923).

Paragraph (d) is based on Title 35, U.S.C., 1946 ed., § 32, first paragraph (R.S. 4887 (first paragraph), amended (1) Mar. 3, 1897, ch. 391, § 3, 29 Stat. 692, 693, (2) Mar. 3, 1903, ch. 1019, § 1, 32 Stat. 1225, 1226, (3) June 19, 1936, ch. 594, 49 Stat. 1529).

The section has been changed so that the prior foreign patent is not a bar unless it was granted before the filing of the application in the United States.

Paragraph (e) is new and enacts the rule of *Milburn v. Davis-Bournonville*, 270 U.S. 390, by reason of which a United States patent disclosing an invention dates from the date of filing the application for the purpose of anticipating a subsequent inventor.

Paragraph (f) indicates the necessity for the inventor as the party applying for patent. Subsequent sections permit certain persons to apply in place of the inventor under special circumstances.

Paragraph (g) is derived from Title 35, U.S.C., 1946 ed., § 69 (R.S. 4920, amended (1) Mar. 3, 1897, ch. 391,

§ 2, 29 Stat. 692, (2) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212), the second defense recited in this section. This paragraph retains the present rules of law governing the determination of priority of invention.

Language relating specifically to designs is omitted for inclusion in subsequent sections.

AMENDMENTS

1975—Par. (e). Pub. L. 94-131 inserted provision for nonentitlement to a patent where the invention was described in a patent granted on an international application by another who has fulfilled the requirements of pars. (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

1972—Subsec. (d). Pub. L. 92-358 added reference to inventions that were the subject of an inventors' certificate.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3(b) of Pub. L. 92-358 provided that: "Section 2 of this Act [which amended this section] shall take effect six months from the date when Articles 1 to 12 of the Paris Convention of March 20, 1883, for the Protection of Industrial Property, as revised at Stockholm, July 14, 1967, come into force with respect to the United States [Aug. 25, 1973] and shall apply to applications thereafter filed in the United States."

SAVINGS PROVISIONS

Section 4 of act July 19, 1952, ch. 950, 66 Stat. 815, provided that subsection (d) of this section should not apply to existing patents and pending applications, but that the law previously in effect, namely the first paragraph of R.S. 4887 [first paragraph of section 32 of this title], should apply to such patents and applications. Said paragraph of section 32 provided that:

"No person otherwise entitled thereto shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid by reason of its having been first patented or caused to be patented by the inventor or his legal representatives or assigns in a foreign country, unless the application for said foreign patent was filed more than twelve months, in cases within the provisions of section 31 of this title, and six months in cases of designs, prior to the filing of the application in this country, in which case no patent shall be granted in this country."

CROSS REFERENCES

Abandonment of invention for unauthorized disclosure, see section 102 of this title.

Benefit of earlier filing date in foreign country; right of priority, see section 119 of this title.

Filing application in foreign country, see section 184 of this title.

Interferences, see section 135 of this title.

Time of prior use or publication for design patents, see section 172 of this title.

EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING PATENT CASES

Relief as to filing date of patent application or patent affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, but patents issued with earlier filing dates not effective as prior art under subsec. (e) of this section of such earlier filing dates, see note set out under section 111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 363, 375 of this title.

### § 103. Conditions for patentability; non-obvious subject matter

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

(July 19, 1952, ch. 950, 66 Stat. 798.)

HISTORICAL AND REVISION NOTES

There is no provision corresponding to the first sentence explicitly stated in the present statutes, but the refusal of patents by the Patent Office, and the holding of patents invalid by the courts, on the ground of lack of invention or lack of patentable novelty has been followed since at least as early as 1850. This paragraph is added with the view that an explicit statement in the statute may have some stabilizing effect, and also to serve as a basis for the addition at a later time of some criteria which may be worked out.

The second sentence states that patentability as to this requirement is not to be negatived by the manner in which the invention was made, that is, it is immaterial whether it resulted from long toil and experimentation or from a flash of genius.

CROSS REFERENCES

Description of invention, see section 112 of this title.

### § 104. Invention made abroad

In proceedings in the Patent Office and in the courts, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country, except as provided in sections 119 and 365 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States and serving in a foreign country in connection with operations by or on behalf of the United States, he shall be entitled to the same rights of priority with respect to such invention as if the same had been made in the United States.

(July 19, 1952, ch. 950, 66 Stat. 798; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949; Nov. 14, 1975, Pub. L. 94-131, § 6, 89 Stat. 691.)

EFFECTIVE DATE OF 1975 AMENDMENT

*For effective date of amendment of first sentence by Pub. L. 94-131, § 6, Nov. 14, 1975, 89 Stat. 691, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.*

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 109 (Aug. 8, 1946, ch. 910, 60 Stat. 943).

Language has been changed and the last sentence has been broadened to refer to persons serving in connection with operations by or on behalf of the United States, instead of solely in connection with the prosecution of the war.

AMENDMENTS

1975—Pub. L. 94-131 inserted in the exception provision reference to section 365 of this title relating to priority of applications having benefit of filing date of prior applications.

Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

CHANGE OF NAME

Reference to the Patent Office deemed reference to the Patent and Trademark Office pursuant to Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

CROSS REFERENCES

Benefit of filing date in foreign country, see section 119 of this title.

Filing application in foreign country, see section 184 of this title.

## CHAPTER 11—APPLICATION FOR PATENT

Sec.
111. Application for patent.
112. Specification.
113. Drawings.
114. Models, specimens.
115. Oath of applicant.
116. Joint inventors.
117. Death or incapacity of inventor.
118. Filing by other than inventor.
119. Benefit of earlier filing date in foreign country; right of priority.
120. Benefit of earlier filing date in the United States.
121. Divisional applications.
122. Confidential status of applications.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 371, 373, 375 of this title.

### § 111. Application for patent

Application for patent shall be made by the inventor, except as otherwise provided in this title, in writing to the Commissioner. Such application shall include: (1) a specification as prescribed by section 112 of this title; (2) a drawing as prescribed by section 113 of this title; and (3) an oath by the applicant as prescribed by section 115 of this title. The application must be signed by the applicant and accompanied by the fee required by law.

(July 19, 1952, ch. 950, 66 Stat. 798.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 33 (R.S. 4888, amended (1) Mar. 3, 1915, ch. 94, § 1, 38 Stat. 958; (2) May 23, 1930, ch. 312, § 2, 46 Stat. 376).

The corresponding section of existing statute is divided into an introductory section relating to the application generally (this section) and a section on the specification (sec. 112).

The parts of the application are specified and the requirement for signature is placed in this general section so as to insure that only one signature will suffice.

EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING PATENT, TRADEMARK, AND OTHER FEDERAL CASES

Pub. L. 92-34, June 30, 1971, 85 Stat. 87, as amended by Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, provided that:

"Section 1 [Claim and verified statement for benefit of earlier filing date; prior art; evidence of entitled filing date in any proceedings]. (a) A patent or trademark application shall be considered as having been filed in the United States Patent and Trademark Office on the date that it would have been received by the Patent and Trademark Office except for the delay caused by the emergency situation affecting the postal service which began on March 18, 1970, and ended on or about March 30, 1970, if a claim is made for the benefit of an earlier date in accordance with subsections (b) and (c) of this section. Patents issued with earlier filing dates afforded by this section shall not be effective as prior art under subsection 102(e) of title 35 of the United States Code [section 102(e) of this title] as of such earlier filing dates.

"(b) No patent or trademark application, patent, or trademark registration shall be entitled to an earlier filing date under this section unless a verified statement by the applicant or owner of record claiming the filing date to which the application is believed to be entitled is filed in the Patent and Trademark Office within six months after enactment of this Act [June 30, 1971]. Such statement shall be maintained in the file of the application in the Patent and Trademark Office and shall be referred to in the patent or trademark registration when practicable.

"(c) When a statement filed under subsection (b) of this section appears unreasonable or defective on its face, or when the filing date of the patent or trademark application, patent, or trademark registration is called into question or is material in any inter partes proceeding in the Patent and Trademark Office or any proceeding in the courts, the applicant or owner of such application, patent, or trademark registration may be required to present evidence establishing the filing date to which the application is entitled. The filing date to which the application is entitled shall be determined on the basis of such evidence and any evidence introduced by an opposing party. The evidence shall be presented as directed by the Commissioner of Patents and Trademarks in proceedings in the Patent and Trademark Office or as directed by the courts in proceedings in the courts.

"Sec. 2 [Delayed fees or actions, excusal; relief request, date; applicability to Federal laws; determination of relief]. (a) Except for the filing of a patent or trademark application, if any action is taken or any fee is paid in the United States Patent and Trademark Office later than the end of a time period specified in the statutes set forth in subsecion (b) of this section for taking such action or paying such fee, and no provision exists in law for excusing such delay, the delay may be excused if it is determined that it was caused by the emergency situation affecting postal service which began on March 18, 1970 and ended on or about March 30, 1970. Relief under this section must be requested by a verified statement filed in the Patent and Trademark Office by the patent or trademark applicant or owner within six months after enactment of this Act [June 30, 1971].

"(b) This section is applicable to title 35, United States Code, 'Patents'; the Trademark Act of 1946, ch. 540, 60 Stat. 427, as amended [section 1051 et seq. of Title 15, Commerce and Trade]; the Atomic Energy Act of 1954, Pub. L. 83-703, 68 Stat. 919, as amended [section 2011 et seq. of Title 42, The Public Health and Welfare]; and the National Aeronautics and Space Act, Pub. L. 85-568, 72 Stat. 426 (1958), as amended [section 2451 et seq. of Title 42]. In cases involving the Atomic Energy Act of 1954 [section 2011 et seq. of Title 42] or the National Aeronautics and Space Act [section 2451 et seq. of Title 42], determinations of relief shall be made by a Board of Patent Interferences. In other cases determinations shall be made by the Commissioner of Patents and Trademarks.

"Sec. 3 [Regulations]. The Commissioner of Patents and Trademarks may establish regulations for administering this Act."

CROSS REFERENCES

Fees, see sections 41 and 42 of this title.

Provisions of this chapter applicable to applications for reissue of patents, see section 251 of this title.